IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.02.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM

Writ Petition No.9292 of 2004
and
W.P.M.P. No.10830 of 2004

M/s.Arma Electronics Industries,
No.26, North Sammanathapuram Street,
Rajapalayam - 626 117,
Rep. by its Partner - S.Ramani. ... Petitioner

vs.

The Tamilnadu Industrial Investment
Corporation Ltd.,
No.100, Railway Feeder Road,
Virudhunagar 626 001 - Rep. by
Branch Manager. ... Respondent

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the entire records leading to the letter VNR/LAO-2/2003-2004, dated 12.02.2004, on the file of the respondent herein, quash the same and consequently direct the respondent to treat the term loan account of the petitioner as closed and release the securities in pursuance of the 'Non-Discretionary and Non-Indiscriminatory Scheme' for 2002-2003 dated 2.12.2002, issued by the respondent.

For Petitioner : Mr.Gupta

For Respondent : Mr.Jayesh L.Dolia for
M/s.Aiyer & Dolia.

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O R D E R

Aggrieved by the letter, dated 12.02.2004, of the Branch Manager, Tamilnadu Industrial Investment Corporation Limited,

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Virudhunagar, the petitioner has filed this Writ Petition to quash the same and consequently direct the respondent to treat the term loan account of the petitioner as closed and release the securities in pursuance of the 'Non-Discretionary and Non-Indiscrimintory Scheme' for 2002-2003 dated 02.12.2002 issued by the respondent.

2. Brief facts, as stated in the affidavit filed in support of the Writ Petition, are reproduced here-under:

According to the petitioner, it is a partnership firm, which was engaged in the business of manufacturing TV signal boosters, antennas, etc. The petitioner applied for term loan for manufacture of the aforesaid components and, by order dated 3.3.1993, the respondent sanctioned a term loan of Rs.2,71,000/-. The loan is repayable in 28 quarterly instalments after an initial moratorium of 1-1/2 years from the date of the first drawal/disbursement of the loan. The loan was guaranteed by mortgage of vacant land measuring 1.75 acres, comprised in S. No.657/A1, South Venkanallur Village, Rajapalayam, owned by one V.Satyanarayana, father of the petitioner (partner) and another building owned by ex-partner A.Ayyanna Naidu. Thereafter, first disbursement of Rs.91,400/- was made only on 09.08.1993 and the final disbursement of Rs.10,395.95 was made only on 26.05.1994. The petitioner repaid a total sum of Rs.2,04,484/- in 17 instalments. During 1996, the demand for boosters and TV antennas started declining because of the advent of cable TV due to satellite technology, hence, the petitioner closed down the manufacturing operations because of lack of market.

Due to long closure of the factory, the dyes and tools started rusting, with the result, the petitioner took the dyes to the manufacturer at Coimbatore for repairs. This was informed to the respondent by the petitioner by letter dated 06.09.1996. Due to the pressure on the part of the respondent, the petitioner paid an advance of Rs.50,000/- towards closing down of the term loan which was acknowledged by the respondent vide their receipt dated 2.4.1997. While so, the respondent issued a notice on 27.1.1998 calling upon the petitioner to hand over possession of the unit on 04.08.1998. On receipt of the said letter, the petitioner paid a sum of Rs.34,000/- on 12.02.1998 and a further sum of Rs.25,000/-. He also paid a sum of Rs.25,000/- in September, 1998, Rs.30,000/- in November, 1998 and Rs.30,000/- in March, 2000. On receipt of notice dated 24.01.2001, the petitioner made payment of Rs.50,000/- in March, 2001, and requested the respondent to grant permission for closing the loan. When the petitioner met the respondent in person, he was informed about the availability of One Time Settlement Scheme (OTS) under the name and style of 'Non-discretionary and Non-discriminatory Scheme'. The respondent, by their letter dated 02.12.1992, informed the petitioner about the OTS for term loans disbursed up Rs.5,00,000/-. As against the outstanding sum of

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Rs.1,66,093.75, the petitioner was called upon to pay a sum of Rs.16,928/- towards final settlement of the loan account with a waiver for a sum of Rs.1,49,165/- for OTS. The petitioner was called upon to make a down payment of Rs.15,404/- along with their proposal for accepting the OTS. Immediately on receipt of the said letter, the petitioner accepted the offer of OTS on the term loan and remitted the entire amount of Rs.16,928/- as demanded by the respondent, by way of demand draft dated 10.12.2002 drawn on Indian Bank, Srivilliputhur Branch. The petitioner requested the respondent to accept the final settlement payment and close the loan outstanding and also to release the collateral securities.

While so, the petitioner was surprised to receive a letter dated 07.07.2003 from the respondent stating that they have introduced a new scheme for the year 2003-2004, under which, the petitioner was called upon to deposit a principal amount of Rs.1,54,036/-. The petitioner was also called upon to deposit Rs.48,509/- within 30 days of the receipt of the said letter. Pursuant to the same, the petitioner met the respondent and explained their position, the earlier offer and payment made by them. Inasmuch as there was no response from the respondent, having no other remedy, the petitioner has filed the present Writ Petition.

3. The respondent/Branch Manger of the Corporation has filed a counter affidavit, highlighting the loan sanctioned in favour of the petitioner, terms and conditions, the balance amount payable by him etc.

4. Heard learned counsel for the petitioner as well as the respondent.

5. It is not in dispute that the petitioner, who was sanctioned the term loan of Rs.2,71,000/-, agreed to repay the same under certain terms. I have already referred to the various amounts repaid by the petitioner by way of instalments during the subsistence of loan period.

6. Learned counsel for the petitioner has brought to my notice that, during the subsistence of loan, when he repaid a substantial amount by way of instalments, the respondent, by letter dated 02.12.2002, intimated about the OTS called "Non-discretionary and Non-Discriminatory One Time Settlement Scheme" in respect of term loans disbursed upto Rs.5,00,000/-. In the said letter, which is available at page No.1 of the typed set, it is specifically stated by the Branch Manager of the Corporation that, as per their records, Rs.1,66,093.75 is out standing as loan from the petitioner. Paragraph No.2 of the letter specifically states that as per the said scheme, the petitioner has to pay Rs.16,928/- along with other dues if any towards final settlement of their (petitioner's) loan

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account with them (respondent). It also states that the Corporation is willing to waive Rs.1,49,165/- for OTS. To avail the benefit of the scheme, the petitioner was requested thereby to make a down payment of Rs.15,404/- along with their proposal for availing/accepting the OTS. It is further seen that on receipt of the letter/proposal of the respondent dated 02.12.2002, accepting the OTS, the petitioner sent a reply letter on 11.12.2002, enclosing a Demand Draft, dated 10.12.2002, for Rs.16,928, drawn on Indian Bank, payable at Virudhunagar. In the said letter the petitioner requested the respondent to accept the final settlement, close the loan outstanding and release the collateral securities. The said letter of the petitioner is available at page Nos.3 and 4 of the typed set of papers. The petitioner has also enclosed a xerox copy of the Demand Draft for Rs.16,928, which is available at page No.5 of the typed set.

7. It is the grievance of the petitioner that, pursuant to the intimation/request of the respondent, inasmuch as payment has been made accepting the OTS, the respondent is not justified in calling upon the petitioner to accept a modified scheme and asking him to pay Rs.1,54,035/- before 31.12.2003. It is not the case of the respondent that the letter dated 02.12.2002, in which the offer was made, had not been issued by the Branch Manger of the respondent-Corporation. In fact, the petitioner accepted the offer and enclosed a demand draft for Rs.16,928/- along with the acceptance letter as early as on 11.12.2002. Thereafter, there was no communication or whisper by the respondent retracting/repudiating the earlier offer dated 02.12.2002. No doubt, learned counsel for the respondent has brought to my notice that in the letter dated 12.2.2004, there is a reference to the earlier letter dated 02.12.2002. The letter dated 12.02.2004 is available at page No.13 of the typed set. A perusal of the said letter does not show that the earlier offer/request made by way of letter dated 02.12.2002 had been sent by mistake or inadvertence etc. Even otherwise, in the absence of any reply or communication, retracting the letter dated 02.12.2002 within a reasonable time, I am of the view that the respondent is not justified in reopening the issue and calling upon the petitioner to pay the outstanding amount. Though learned counsel for the respondent informed this Court that the offer in the letter dated 02.12.2002 was a mistake, it is not reflected in any of the subsequent correspondence by the respondent. In view of the fact that the respondent intimated the proposal regarding OTS, which is applicable to the term loan disbursed to the petitioner, and that the same had been duly complied with by the petitioner and acknowledged by the respondent, the respondent cannot take a different stand and compel the petitioner to pay the outstanding amount of Rs.1,54,035/-, ignoring the earlier proceedings referred above.

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8. In the light of the above discussion, the impugned letter VNR/LAO2/2003-2004, dated 12.02.2004, is quashed and direction is issued to the respondent to treat the term loan account of the petitioner as closed and release the collateral securities in pursuance of the Non-Discretionary and Non-Indiscriminatory Scheme for 2002-2003 dated 02.12.2002.

9. In the result, the Writ Petition is allowed. No costs. Connected Miscellaneous Petition stands closed. In view of the order, quashing the impugned letter, the respondent is directed to return Rs.83,757/- to the petitioner, which was paid pursuant to the interim order of this Court, within two weeks from the date of receipt of copy of this Order.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Branch Manger,
The Tamilnadu Industrial Investment
Corporation Ltd.,
No.100, Railway Feeder Road,
Virudhunagar 626 001.

+1 CC to M/s.Aiyer & Dolia, Advocate, SR No.5855

+1 CC to M/s.Gupta & Ravi, Advocate, SR No.6038

GM(CO)
BG/17.2.2006

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& connected WPMP.

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